



4. The Defendant hereby exercises his/her rights to remain silent and privileges against self-incrimination and rights to counsel under the Federal and State Constitutions. See, e.g., *Massiah v. United States*, 377 U.S. 201 (1964); *People v. Pierson*, 633 P.2d 485 (Colo.App. 1981); *People v. Pierson*, 670 P.2d 770 (Colo. 1983); *People v. Cerezo*, 635 P.2d 197 (Colo. 1981); *People v. Lowe*, 616 P.2d 118 (Colo. 1980); *People v. Jones*, 677 P.2d 383 (Colo.App. 1983). See also *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981); *United States v. Henry*, 447 U.S. 264 (1980); *Maine v. Moulton*, 474 U.S. 159 (1985).

## **II.**

1. The Defendant requests this Court to order the discovery, preservation, and immediate production of the following materials:

2. Police handwritten or typed or dictated notes and tapes of any and all contacts and statements of all people contacted or interviewed regarding this case. Police handwritten or typed or dictated notes and tapes of all police activities and commentary and statements regarding this case.

3. The tapes of dictations police investigators dictate from their notes that are or are not transcribed into police reports.

4. All records, experiments, 911 tapes, dispatch tapes, and all other audiotapes and/or videotapes and/or other media of recordings.

5. Duplicates of all photographs, videotapes and/or audiotapes of any and all autopsies.

6. These materials should be preserved and made available to defense counsel pursuant to Crim.P. 16(I)(a) and (c).

7. This discovery is required by the Fifth, Sixth, and Fourteenth Amendments, Art. II, §§ 16 and 25 of the Colorado Constitution; Crim.P. 16, Part I; and *Brady v. Maryland*, 373 U.S. 83 (1963). This information and material is exculpatory, material and relevant.

8. See *People v. Garcia*, 627 P.2d 255 (Colo. 1980); *People v. Garries*, 645 P.2d 1306 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981);. *People v. Gomez*, 198 Colo. 105, 596 P.2d 1192 (Colo. 1979).

9. The preservation and production of requested items are material to the preparation of the defense in this case and that the request is reasonable.

## **III.**

The Defendant demands and moves for the court to order the State to preserve and produce to the Defendant upon request all physical evidence in this matter, including but not limited to the following:

1. All cars which have been seized or searched.

2. All houses and buildings which have been seized or searched.

3. All physical evidence obtained from the vehicles or buildings noted above.

4. All blood samples in or around any of the cars or buildings noted above, or which have in any way been obtained by the police or prosecution in this case.

5. All weapons and ammunition and bullets and bullet fragments, from any source.

6. All supposed trace evidence, including but not limited to hairs, fibers, blood, saliva, skin, gunshot residue of any description, blood spatter.

7. Under *People v. Garcia*, 627 P.2d 255 (Colo. 1980); *People v. Garries*, 645 P.2d 1306 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981);. *People v. Gomez*, 198 Colo. 105, 596 P.2d 1192 (Colo. 1979), and other authorities, the State must preserve at least equal amounts of any evidence tested by the prosecution, for defense testing. The Defendant moves for the court to enter such an order.

8. The Defendant moves for the court to order that the State preserve any evidence with any possible potential exculpatory or impeaching value.

9. Should any genetic or blood-typing testing be done, the Defendant demands and moves for the court to order that a defense-retained expert be permitted to observe such testing.

10. The evidence noted herein has obvious material value to the defense, and cannot legitimately be altered or left unpreserved merely because the State either does not comprehend the value of the evidence or feels that it does not need the evidence. In either situation, the evidence is almost surely exculpatory in nature.

11. Unless the State preserves and makes available the evidence in this matter in unchanged condition, the exculpatory and evidentiary value of the evidence will be lost for the Defendant. The Defendant will be denied the ability to effectively confront and cross-examine the state's witnesses due to the loss of or unavailability of or changed condition of the evidence. The Defendant will be denied effective assistance of counsel if his/her counsel do not have prompt access to the physical evidence in this case.

#### **IV.**

The Defendant, by and through counsel, requests that a confidential ballistics and/or firearms expert employed by the defense be permitted to be present to observe ballistics and/or operational testing and examination of all weapons in this case by any police or prosecution agency, and as grounds therefore states:

1. The testing of weapons and ammunition may necessarily be consumptive and destructive of some important evidence in this case.

2. Effective assistance of counsel requires the presence of a defense expert. The right to counsel under the State and federal Constitutions thus mandate the relief requested.

3. It is critical and essential to the preparation of the defense that a defense expert be present.

4. Due process requires that the defense be given such access to police or prosecution testing of evidence when the quality or quantity of the evidence may change as a result of the testing, or if there is no good grounds to deny the defense access to the testing. The police and prosecution have no privileges to keep secret their handling and manipulation of evidence.

#### **V.**

The Defendant moves for an order allowing the Defendant to have a confidential expert present during any scientific testing of evidence by the police or prosecution agents in this case, for the following reasons:

1. The state, through its police agents or other agents, may perform various forms of testing involving items of evidence, such as firearms, bullets, and shell casings. Other forms of scientific testing may also be performed.

2. In doing so, the state's agents apply various scientific procedures and methods of their own choosing to the evidence.

3. While such testing may not destroy the existing evidence, the evidence that is developed as a result of such scientific testing normally consists of the observations and subsequent testimony of the state's experts as to the methods and procedures which were employed, and their observations of the results thereof. Unless the Defendant is permitted to have his/her own representative confidential expert present during those procedures and tests, he will have lost any realistic ability to confront the state's evidence as to the procedures performed and the results obtained. The state's experts will have sole and virtually unchallengeable control of the evidence generated as a result of those tests.

4. Further, such testing may destroy the existing evidence. For example, bullets in evidence may be fired, and the condition of other evidence may be altered by the testing. In such situations, the Defendant has a due process right to have his/her own confidential expert be present at such testing.

5. The Defendant requests the opportunity to have his/her own representative expert observe the scientific procedures and tests performed by the state. Such a representative expert would not participate in or in any fashion interfere with or influence the state's testing procedures. Such an expert would enable the Defendant to have reasonable access to the evidence and a reasonable opportunity to confront that sort of evidence in this case, and in this instance the requested relief is virtually the only method of allowing the Defendant access to the evidence and an ability to effectively confront such evidence in court.

6. The only consequences of allowing the Defendant to have an expert present at the state's scientific testing of evidence is a significant enhancement of the reliability of the truth-seeking function of this case, and the protection of the Defendant's right to effective assistance of counsel. It is well-recognized that the right to counsel may include the assistance of confidential experts, see, e.g. *Miller v. District Court*, 737 P.2d 834 (Colo. 1987); *Hutchinson v. People*, 742 P.2d 875 (Colo. 1987). The state has no privileges or rights to confidentiality or secrecy at any point in such testing. No "work product" is involved. Since their work is intended to generate evidence which may be used in court, the police and other prosecution agents have no legitimate reasons for keeping their methods or procedures from the strictest scrutiny by the affected party.

## **VI.**

The Defendant moves that the court order the state to refrain from performing any additional scientific testing on the evidence in this case until the issues presented by the Defendant's motions to have confidential defense experts present at such scientific testing are resolved, for the following reasons:

1. The Defendant has filed the motion above, and he expects that the issues raised therein can and should be resolved in an expeditious manner. The state would suffer no prejudice from a delay.

2. Testing of the weapon and other evidence in this case would potentially be exculpatory as to issues which are material to the defense. There is a manifest necessity that a defense expert be present in order to properly document and preserve potentially exculpatory evidence.

3. The State and Court are on notice that initial testing may destroy evidence that cannot be replicated by duplicative testing. The state and court are also on notice that testing performed without the presence of the Defendant's experts will deprive the Defendant of a realistic ability to confront and rebut testimony concerning such testing.

4. The Defendant also hereby requests that the state refrain from any scientific testing in this case until the Defendant's expert(s) are present and able to observe the testing procedures.

5. The Defendant also requests and demands of the prosecution that it refrain from conducting any such testing until such time as the issue of a defense expert observing testing is resolved.

## **VII.**

1. The Defendant demands and moves for compliance with Crim.P. 16, including but not limited to the maximum time limits for production of discovery under part (I)(b). The Defendant demands and requests duplicates of all duplicable materials.

2. The Defendant demands immediate access to all photographs taken by the State, so that he may specifically designate which photographs should be duplicated.

3. The Defendant respectfully requests that this Court order that any members of law enforcement or the Colorado Bureau of Investigation (CBI) be required to make a second photograph or exhibit for the Defense at the same time as the original is made in any one shot testing procedure that is conducted in the above-captioned case and as grounds states as follows:

4. Historically, the defense has requested exact reproductions of the Polaroid??? photographs of such tests as the DNA testing results and the shoeprint standards created by the CBI. The defense has been provided color photocopies of the DNA photographs which are not as accurate a reproduction as a Polaroid??? taken at the same time as the original.

5. When the defense puts photocopies of shoeprint standards made on acetate over the original standards, they are not exact reproductions and therefore the defense does not have the same information, exhibit or data as the prosecution.

#### **VIII.**

Pursuant to Crim.P. 16 and the Due Process Clauses of the United States and Colorado Constitutions, the Defendant requests and demands disclosure of all records and logs and receipts pertaining to the storage and movement of physical evidence.

#### **IX.**

### **REVOCATION OF ALL RELEASES AND WAIVERS AND ASSERTION OF ALL RIGHTS AND PRIVILEGES.**

The Defendant hereby revokes and rescinds all releases, waivers and authorizations for the release of information which he may have heretofore made to the government or any other person or agency except his/her attorneys, and he hereby asserts all of his/her rights and privileges under Colorado's privilege rules, statutes and principles, including but not limited to C.R.S. §13-90-107, and the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution.

#### **X.**

1. The Defendant demands pursuant to C.R.S. §16-3-309 (5) and the Due Process, Right to Counsel, Confrontation, and Compulsory Process Clauses of the federal and Colorado Constitutions, that all criminalistics and laboratory personnel, employees and technicians testify in person as to the results of any laboratory procedures received in evidence in any court proceedings, including but not limited to trial, sentencing, hearings on motions.

#### **XI.**

1. The Defendant demands and moves for this court to order the state to produce to the Defendant and to allow the Defendant to examine all exhibits and evidence which the state has possession or control of or which it intends to present at trial, and for the state to prepare and submit a listing of its exhibits and evidence as soon as possible, but no later than 90 days before trial, for the following reasons:

2. Crim.P. 16 (I)(a)(1)(IV) requires that the state provide to the accused all "tangible objects held as evidence in connection with the case." This must be done as soon as practicable but no later than 20 days after the first appearance. Crim.P. 16 (I)(b)(1).

3. Although the Rule is mandatory in its terms, in order to comply with its obligations and to facilitate the process of the trial, and in order to enable the Defendant to prepare for trial and to avoid surprise, the state should be ordered to perform the tasks set forth above. By

requiring the state to provide a listing of exhibits that the state intends to present as evidence, the court will expedite the trial process and will enable the Defendant to avoid needless waste of time and resources.

4. This demand and motion necessarily includes any charts, graphs, photos, and any other tangible physical objects the state might use as evidence at trial or which is being held as evidence.

## **XII.**

1. The Defendant moves for an order to the prosecution to preserve and produce all evidence in this case, and to return the evidence and materials which were reportedly sent to other agencies for testing or evaluation, so that such materials and evidence are available for any testing, examination and evaluation which the Defendant needs to conduct in order to prepare his/her defense to the charges against him, for the following reasons:

2. If they are to expeditiously and effectively prepare the Defendant's defense, it is essential that the Defendant's attorneys have access to the alleged evidence in this case without interference or delays. If the evidence is in the hands of outside police agencies, there will inevitably be delays and interferences arising from those agencies.

3. The state bears an obligation under Crim.P. 16(I)(a)(IV) to make all of the physical evidence available to the accused. The state bears the same responsibility under the Due Process, Compulsory Process and Right to Counsel Clauses of the U.S. and Colorado Constitutions.

4. Crim.P. 16 (I)(a)(3) extends this obligation to all police agencies involved in any respect with the prosecutors in this case, namely the local sheriff and police and any agency to which the evidence has been sent. The requirements of those parts of Crim.P. 16 have already been actuated and should have already been complied with by the state.

5. Thus, the Defendant moves for this court to order the state to make all of the evidence immediately available for the Defendant's use and testing and evaluation, and to immediately notify the Defendant if any of such evidence is not so available.

The Defendant moves for a hearing on this motion and all motions in this case.

The Defendant makes this motion and objection and all motions and objections in this case, whether or not specifically noted at the time of the making of the motion or objection, on and under the following grounds and authorities: the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Right to Remain Silent, and Right to Appeal Clauses of the federal and Colorado Constitutions, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments to the United States Constitutions, and Article II, Sections, 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution, and Crim.P. 16.

MEGAN A. RING  
COLORADO STATE PUBLIC DEFENDER



/s/Samuel Dunn #46901  
Deputy State Public Defender



/s/Kathryn Herold #40075  
Deputy State Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2021, I served the foregoing document by e-service through ICCES to all opposing counsel.  
MRA

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